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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,266	09/15/2003	William H. Shepard	05918-212001 / 4470	9026

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EXAMINER

PASCUA, JES F

ART UNIT	PAPER NUMBER
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3782

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/662,266	Applicant(s) SHEPARD ET AL.	
	Examiner Jes F. Pascua	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-13 and 15-32 is/are pending in the application.
- 4a) Of the above claim(s) 21-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10, 11, 15-17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 12, 13, 18 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is indefinite because it depends from cancelled claim 9. For examination purposes, claim 10 will be considered as dependent from claim 1.

Claim 13 is rejected, since it depends from a claim rejected under 35 U.S.C. § 112, second paragraph.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5, 6, 19 and 20 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,213,641 to Price.

As a note, the closure of Price is located between the folding region of the expandable gusset and corresponding adjacent edge region of one of the broad face panels to the same degree applicant sets for the metes and bounds of the gusset folding region and the edge region of the broad face panels.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 3-240651 Yano and Price.

Yano discloses the claimed invention except that each show the closure as mating male and female profiles instead of mating bands of hooks and hook-engageable fibers. Price shows that a closure sold under the trademark VELCRO is an equivalent structure known in the art. Therefore, because these two closure means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the mating male and female profiles of Yano for the VELCRO closure of Price. The VELCRO closure of Price is considered to meet the recitation of mating bands of hooks and hook-engageable fibers.

As a note, the closure of Yano is located between the folding region of the expandable gusset and corresponding adjacent edge region of one of the broad face

panels to the same degree applicant sets for the metes and bounds of the gusset folding region and the edge region of the broad face panels.

7. Claims 1-3, 5, 6, 15, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 5-147661 to Watanabe and Price.

Watanabe discloses the claimed invention except that each show the closure as mating male and female profiles instead of mating bands of hooks and hook-engageable fibers. Price shows that a closure sold under the trademark VELCRO is an equivalent structure known in the art. Therefore, because these two closure means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the mating male and female profiles of Watanabe for the VELCRO closure of Price. The VELCRO closure of Price is considered to meet the recitation of mating bands of hooks and hook-engageable fibers.

As a note, the closure of Watanabe is located between the folding region of the expandable gusset and corresponding adjacent edge region of one of the broad face panels to the same degree applicant sets for the metes and bounds of the gusset folding region and the edge region of the broad face panels.

8. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price and U.S. Patent No. 5,065,899 to Tilman.

Price discloses the claimed invention except for the bag body having flanges outboard of the closure being sealed together and having a frangible tear line. Tilman

teaches that it is known in the art to provide an analogous bag body with flanges extending outboard of the closure with the flanges being sealed together and having a frangible tear line. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bag body of Price with the sealed and frangible flanges of Tilman, in order provide the bag body with tamper resistance or evidence.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe and Price, as applied in claims 1 and 15 above, and in further view of U.S. Patent No. 5,065,899 to Tilman.

Watanabe and Price disclose the claimed invention except for the bag body having flanges outboard of the closure being sealed together and having a frangible tear line. Tilman teaches that it is known in the art to provide an analogous bag body with flanges extending outboard of the closure with the flanges being sealed together and having a frangible tear line. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bag body of Watanabe with the sealed and frangible flanges of Tilman, in order provide the bag body with tamper resistance or evidence.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Price and U.S. Patent No. 6,007,244 to Dinder.

Price discloses the claimed device except for one of the face panels having an extension defining at least one hole. Dinder discloses that it is known in the art to provide one of the face panels of another reclosable bag with an extension defining at least one hole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide one of the face panels of Price with the extension defining at least one hole of Dinder, in order to suspend the bag for filling.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe and Price, as applied in claim 1 above, and in further view of U.S. Patent No. 6,007,244 to Dinder.

Watanabe and Price discloses the claimed device except for one of the face panels having an extension defining at least one hole. Dinder discloses that it is known in the art to provide one of the face panels of another reclosable bag with an extension defining at least one hole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide one of the face panels of Watanabe with the extension defining at least one hole of Dinder, in order to suspend the bag for filling.

***Allowable Subject Matter***

12. Claims 12, 13, 18 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claims 10 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

14. Applicant's arguments with respect to claims 1-7, 10-13, 15-20 and 32 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3782

JFP